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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/779,508      | 02/13/2004  | David G. Clark       | 5853-387            | 8894             |

30448 7590 01/10/2005

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|          |
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| EXAMINER |
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COLE, MONIQUE T

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| ART UNIT | PAPER NUMBER |
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1743

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/779,508

Applicant(s)

CLARK ET AL.

Examiner

Monique T. Cole

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-27 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: the appendix to the specification is improper and should be incorporated into the body of the specification for consideration. Appropriate correction is required.
2. Claims 5, 6, 8, 18, 19, 24, & 25 are objected to because of the following informalities: the claims improperly make reference to Table 1. If it is applicant's intent to have the compounds as part of the claims, the compounds should be set forth in a proper Markush group. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is rendered indefinite because it is unclear what applicant intends by "HPBCD" and "DMCD." The full name of the diluents must be spelled out in the claim. Further correction is required.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 & 27 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,367,899 to Mookherjee et al. (herein referred to as “Mookherjee”).

Mookherjee teaches a system for perfume creation using aroma emission analysis from a living fruit and flower in close proximity. The invention attempts to overcome the difficulty of capturing and reproducing actual aroma ingredients of living flowers or fruits in an effort to optimize the marketing of perfume compositions based on living fruit/flower components in conjunction with one another. See col. 1, lines 34-50. The inventor had done previous studies where the different volatile components of flowers were measured in the representative amounts. See col. 1, line 51-col. 2, line 12.

The Mookherjee process comprises quantitatively and qualitatively analyzing the aroma emitted and rates of emission of the aroma of components from a living plant/flower; preparing one or more perfume compositions using the results of the analysis to mix the major components found in the analysis. In particular, a rose, carnation, lily, orange and pineapple are used in the process. See col. 3, line 1-col. 4, line 40. The derived fragrance may be incorporated into encapsulated products (col. 13, line 39), or paper/linen products such a fabric softening dryer

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sheets (col. 12, lines 65-66). The perfume may also be incorporated into a aqueous diluent such as non-toxic alcohols or non-toxic glycol (col. 13, lines 35-37).

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mookherjee.

Mookherjee differs from the instant claim in that it does not expressly disclose a petunia plant as a plant from which a perfume is derived. However, it would have been obvious to one having skill in the art to use any fragrant living plant, as Mookherjee broadly discloses living plants/flowers, with the expectation of being able to apply the Mookherjee methodology to derive a fragrance.

9. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Mookherjee in view of USP 4,868,339 to Christenson et al. (herein referred to as "Christenson").

Mookherjee teaches that the diluent may be a non-toxic alcohol or glycol, but does not expressly teach glycerol.

Christenson teaches that glycol and glycerol are functionally equivalent as perfume diluents. Thus, it would have been obvious to one having skill in the art to replace the glycol of

Mookherjee with the glycerol of Christenson and expect to derive a suitable fragrance composition.

*Allowable Subject Matter*

10. Claims 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest preparing a fragrance based on either rose or petunia that have the specifically claimed components or the specifically claimed molar ratio.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 571-272-1255. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Monique T. Cole  
Examiner  
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mtc